

Kevin J. Curtis, WSBA No. 12085
WINSTON & CASHATT, LAWYERS, a
Professional Service Corporation
601 W. Riverside, Ste. 1900
Spokane, WA 99201
Telephone: (509) 838-6131

Charles L. Babcock IV (*admitted pro hac vice*)
cbabcock@jw.com
Texas Bar No. 01479500
William J. Stowe (*admitted pro hac vice*)
wstowe@jw.com
Texas Bar No. 24075124
JACKSON WALKER L.L.P.
1401 McKinney Street
Suite 1900
Houston, Texas 77010
(713) 752-4360 (telephone)
(713) 308-4116 (facsimile)

Attorneys for Defendants International Data
Group, Inc., CXO Media, Inc. and Steve Ragan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, a Wyoming
limited liability company, MARK
FERRIS, an individual, MATT FERRIS,
an individual, and AMBER PAUL, an
individual,

Plaintiffs,

vs.

No. 2:17-cv-105-SAB

DEFENDANTS CXO MEDIA, INC.'S,
RESPONSE TO PLAINTIFFS' MOTION
TO EXTEND AMENDED PLEADINGS
DEADLINE

Without Oral Argument
Date: March 12, 2018
Spokane, Washington

CXO MEDIA, INC.'S, RESPONSE TO PLAINTIFFS'
MOTION TO EXTEND AMENDED PLEADINGS
DEADLINE
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601 West Riverside
Spokane, Washington 99201
(509) 838-6131

1 KROMTECH ALLIANCE
2 CORPORATION, a German corporation,
3 CHRIS VICKERY, an individual, CXO
4 MEDIA, INC., a Massachusetts
5 corporation, INTERNATIONAL DATA
6 GROUP, INC., a Massachusetts
7 corporation, and STEVE RAGAN, an
individual, and DOES 1-50,

Defendants.

8 Defendants CXO Media, Inc. ("CXO") respectfully submits this Response to
9 Plaintiffs' Motion to Extend Amended Pleadings Deadline (ECF 81) ("Motion") as
10 follows:

11 Summary

12
13 Plaintiffs seek an extension because they want to contest objections that CXO and
14 International Data Group, Inc. ("IDG") served on Plaintiff all the way back on November
15 28, 2017, 73 days ago. It is completely misleading for Plaintiffs to suggest that their
16 Motion is filed because of a few documents produced on February 6, 2018 pursuant to the
17 protective order entered by the Court the same day, February 6, 2018. Specifically, all
18 the way back on November 28, 2017, IDG and CXO objected that certain jurisdictional
19 discovery requests were outside the scope of jurisdictional discovery because certain
20 requests sought information "regarding articles having nothing to do with this lawsuit"
21 and hence were "directed to general jurisdiction even though (1) the Court's Order (ECF

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24 CXO MEDIA, INC.'S, RESPONSE TO PLAINTIFFS'
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1 No. 60 at 4) specifically states that ‘Plaintiffs are only relying on specific jurisdiction’;
2 (2) Plaintiffs’ counsel expressly disclaimed general jurisdiction at the hearing on CXO's
3 Motion to Dismiss; and (3) Plaintiffs do not allege general jurisdiction in their
4 Complaint.”¹ For example, Plaintiffs asked in an interrogatory the number of views from
5 the United States and from Washington of all articles written by Steve Ragan, not just the
6 specific Ragan article at issue (the “Ragan Article”) that they were actually suing on.
7 CXO objected that, as written, this sought “articles having nothing to do with this
8 lawsuit” and hence for those articles would go to general jurisdiction, which was
9 objectionable for the reasons stated above. *See* Ex. 1, CXO Response to Interrog. No. 5.
10
11 **Importantly, after objecting on this ground, CXO stated that should a protective**
12 **order be entered, it would provide the requested information for the specific Ragan**
13 **Article that Plaintiffs sued on (rather than the other articles having nothing to do**
14 **with the suit):** “Should the parties enter into an agreement regarding treatment of
15 confidential information, Defendant will supplement with appropriately-designated
16 information consistent with its objections – that is, the number of views of the Ragan
17 Article by visitors from Washington State.” *Id.* at Response to Interrog. No. 5(b). CXO
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23 ¹ Ex. 1, CXO’s Response to RFP Nos. 4, 5, 6; *see also* Ex. 2, IDG’s Response to RFP
24 Nos. 5, 6, 7 (all served on November 28, 2017).

1 made these objections on November 28, 2017. It provided this information when the
2 Court issued the protective order. Now, 73 days after Plaintiffs received these objections,
3 and long after the jurisdictional discovery period closed on January 31, 2018, Plaintiffs
4 seek an extension of the amendment deadline a mere 5 days before the deadline.

6 To call this delay unreasonable would be putting it lightly. Plaintiffs knew of
7 CXO's and IDG's position since November 28, 2017. Plaintiffs were given ample time
8 to conduct jurisdictional discovery and to file any motions. They never filed any motion
9 on CXO's or IDG's objections, which they received back on November 28, 2017 (along
10 with documents that CXO and IDG produced back on November 28, 2017, something
11 Plaintiffs omit in their Motion). Once the Court entered the protective order, CXO
12 produced the very confidential information that it said it would produce, such as the
13 revenue from the Ragan Article generated by views from Washington. *Plaintiffs are not*
14 *complaining about that production. What they are complaining about is something*
15 *they have known about since November 28, 2017 – that CXO is not producing*
16 *information regarding general jurisdiction (e.g., revenue from articles having nothing*
17 *to do with this lawsuit).*²

22 ² Specific, or “case-linked” jurisdiction – unlike general jurisdiction – depends on
23 contacts giving rise to the very claims at issue. “What is needed . . . is a connection

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Argument

“When a party seeks to continue the dates set by the court, it must first show ‘good cause’ for modification of the order under Rule 16(b).” *Zone Sports Ctr., LLC v. Rodriguez*, No. 1:11-CV-00622-SKO, 2016 WL 224093, at *4 (E.D. Cal. Jan. 19, 2016) (citing *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)). “The good cause inquiry primarily considers the diligence of the party seeking amendment.” *Id.* (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992)); cf. *Curry v. Tri-State Mem’l Hosp.*, No. 14-CV-00336-JLQ, 2017 WL 3614531, at *2 (E.D. Wash. May 24, 2017) (“Additionally, Defendant made no showing of good cause for the belated filing *nor address the fact counsel was aware of the claim of privilege months before the Motion was filed.*”) (emphasis added).

“In these days of heavy caseloads, trial courts in both the federal and state systems routinely set schedules and establish deadlines to foster the efficient treatment and resolution of cases.” *Wong v. Regents of University of California*, 410 F.3d 1052, 1060 (9th Cir. 2005).

between the forum *and the specific claims at issue.*” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1781 (2017) (emphasis added).

1 This case has been on file for almost a year. On November 28, 2017, CXO and
2 IDG served jurisdictional discovery responses. *See* Stowe Decl. ¶ 3. These included not
3 only written responses but also documents. *Id.* CXO and IDG specifically included
4 objections that certain requests sought information relating to general jurisdiction, such as
5 requests for information regarding articles and revenue having nothing to do with the
6 Ragan Article, which is what Plaintiffs are suing over. Ex. 1, CXO's Response to RFP
7 Nos. 4, 5, 6; *see also* Ex. 2, IDG's Response to RFP Nos. 5, 6, 7. The discovery requests
8 that went into general jurisdiction were objectionable not only because Plaintiffs were
9 only alleging specific jurisdiction, but because Plaintiffs' counsel admitted this at the
10 hearing and even the Court, when ordering jurisdictional discovery, noted that "Plaintiffs
11 are only relying on specific jurisdiction." Order (ECF No. 60 at 4). Indeed, at the
12 hearing, the Court questioned Plaintiffs' counsel on this and counsel confirmed that
13 Plaintiffs are only proceeding under specific jurisdiction:
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16 THE COURT: And you're proceeding only under specific jurisdiction --

17 MR. NETA: That's correct, Your Honor.

18 THE COURT: -- for all of the defendants, is my impression, after reading all
19 the briefing.

20 MR. NETA: Precisely. . . .

21 Ex. 3, Aug. 16, 2017 Hearing Tr. at 49:7-12. Yet Plaintiffs included *general*
22 jurisdictional requests, such as "[t]he number of views by visitors in the state of
23

1 Washington” for articles *other than* the Ragan Article at issue,³ as well as documents
2 “related to CXO Media’s income derived from advertising on its websites to Washington
3 state residents,” again even if completely unconnected to the Ragan Article.⁴
4

5 Plaintiffs utterly fail to show good cause for their unreasonable delay in filing a
6 motion for an extension predicated on something they have known about since November
7 28, 2017. In fact, during a telephone conference on January 2, 2018, CXO’s counsel
8 reiterated to Plaintiffs’ counsel its objection to the discovery requests regarding general
9 jurisdiction. *See id.* ¶ 5. Yet still nothing from Plaintiffs. Plaintiffs sat on their hands
10 and – after the close of jurisdictional discovery, and just days before the amended
11 pleading deadline – decided to seek an extension. That is not diligence. That is not good
12 cause. Lawsuits cost money. **Long lawsuits cost even more.** CXO and IDG will be
13 prejudiced by a further delay of this case because they will have to continue spending
14 money when they should be dismissed – something they have already had to wait to
15 renew until after the close of jurisdictional discovery. This Court generously gave
16 Plaintiffs plenty of time to conduct jurisdictional discovery and resolve any issues
17 therein. Plaintiffs waited until long after the close of jurisdictional discovery to file a
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23 ³ *See* Ex. 1 at Interrog. No. 5(b).

24 ⁴ *See id.* at RFP No. 6.

1 motion regarding this. Plaintiffs are not entitled to an extension of the amended pleading
2 deadline because they have not shown good cause.

3
4 Finally, Plaintiffs did not confer with at least one other Defendant – Kromtech
5 Alliance Corporation – before filing their Motions. Further, Plaintiffs’ Motion and
6 supporting declaration includes the blatantly false statement that Plaintiffs’ counsel
7 conferred with IDG and CXO’s counsel on February 8, 2018 regarding Plaintiffs’
8 intention to file a separate “Motion to Expedite.” *See* Neta Decl. (ECF 80) ¶ 15. That is
9 false. *See* Stowe Decl. ¶ 7. Plaintiffs’ counsel never even mentioned a Motion to
10 Expedite.
11

12 Conclusion and Prayer

13 For the foregoing reasons, the Court should deny Plaintiffs’ Motion for Extension
14 and grant CXO Media, Inc. such other relief to which it is entitled.
15

16 Respectfully submitted this 9th day of February, 2018.

17 s/Kevin J. Curtis, WSBA No. 12085
18 WINSTON & CASHATT, LAWYERS
19 601 W. Riverside, Ste. 1900
20 Spokane, WA 99201
21 (509) 838-6131
22 Facsimile: (509) 838-1416
23 E-mail Address: kjc@winstoncashatt.com

1 Charles L. Babcock IV (*admitted pro hac vice*)
2 cbabcock@jw.com
3 Texas Bar No. 01479500
4 William J. Stowe (*admitted pro hac vice*)
5 wstowe@jw.com
6 Texas Bar No. 24075124
7 JACKSON WALKER L.L.P.
8 1401 McKinney Street
9 Suite 1900
10 Houston, Texas 77010
11 (713) 752-4360 (telephone)
12 (713) 308-4116 (facsimile)

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24 Attorneys for Defendants International Data
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Spokane, Washington 99201
(509) 838-6131

1 I hereby certify that on February 9, 2018, I electronically filed the foregoing with
2 the Clerk of the Court using the CM/ECF System which will send notification of such
3 filing to the following:
4

5 Jason E. Bernstein - jake@newmanlaw.com
6 Leeor Neta (*admitted pro hac vice*) - leeor@newmanlaw.com

7 Attorneys for Plaintiffs

8 Christopher B. Durbin - cdurbin@cooley.com
9 Matthew D. Brown (*admitted pro hac vice*) - brownmd@cooley.com
10 Amy M. Smith (*admitted pro hac vice*) - amsmith@cooley.com

11 Attorneys for Defendant Kromtech Alliance Corporation

12 Edward C. Chung - Echung@cmmlawfirm.com
13 Attorney for Defendant Chris Vickery

14 s/Kevin J. Curtis, WSBA No. 12085
15 WINSTON & CASHATT, LAWYERS
16 Attorneys for Defendants International Data
17 Group, Inc., CXO Media, Inc. and Steve Ragan
18 601 W. Riverside, Ste. 1900
19 Spokane, WA 99201
20 (509) 838-6131
21 Facsimile: (509) 838-1416
22 E-mail Address: kjc@winstoncashatt.com
23
24